

By PwC Deutschland | 18 July 2012

# Aviation spirit not duty-free

**The Supreme Tax Court has refused the claim of a software company for refund of the fuel oil duty paid on its aviation spirit used when flying a company aircraft on business.**

A computer company used its own aircraft to fly the managing director on visits to trade fairs and important customers. It claimed a refund of the fuel oil duty on the aviation spirit used on these business flights; however the customs office refused because the company was not registered as an airline and the duty exemption was only available to airlines when flying fare-paying passengers or freight. The company appealed with the claim that the German provision of national law was an incorrect transposition of the EU directive on excise duties which called for duty exemption for the fuel used on all flights with an immediate business purpose.

The Supreme Tax Court has now rejected the taxpayer's claim for two reasons. Firstly, the directive allows member states to restrict the exemption to kerosene (jet fuel) as opposed to the high octane aviation spirit needed for piston engine aircraft. Thus, the company could not claim a direct entitlement under the directive. The second reason came from the ECJ, to which the court had turned for a preliminary ruling. According to the ECJ, the duty exemption was not restricted to registered airlines as such, but was restricted to commercial flights. A commercial flight in this sense was a flight flown to earn income directly, as opposed to a flight with a business purpose, such as to a customer meeting, that would only indirectly lead to earning income, e.g. through the fulfilment of customer orders obtained at the meeting.

The case references are: Supreme Tax Court VII R 9/09, judgment of February 28, 2012 published on July 18 and ECJ C-79/10 *Helmholtz*, judgment of December 1, 2011.

### **Keywords**

aviation spirit, fuel oil duty